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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,587	12/12/2005	Anders Evensson	62648-P1709	2213
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EXAMINER				
OSTRUP, CLINTON T				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,587

Applicant(s)

EVENSSON, ANDERS

Examiner

CLINTON OSTRUP

Art Unit

3771

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 6/26/06
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the preliminary amendment filed May 3, 2005. As directed by the amendment claims 1-19 have been canceled and claims 20-38 have been added. Thus, claims 20-38 are pending in this application.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 20-38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Where a claim is directed to an apparatus attached to the human body or any part thereof the claim is directed to nonstatutory subject matter because the claim positively recites part of a human body. See: 1077 Official Gazette, April 21, 1987.

Claim 20 is rejected because it positively recites a part of a human body. Claim 20 claims "a mouthpiece arranged to be introduced into and held in the user's mouth" in lines 4-5; "an opening at the end that is to be introduced into the user's mouth" in lines 6-7; and "the filter house is elongated and extends parallel to a line between the corners of the user's mouth when the mouthpiece is inserted in the user's mouth" in lines 10-11. Any remaining claims are rejected as depending from a rejected base claim.

This rejection may be obviated by having the various parts be "adapted to" be placed in, or on, a user.

Any remaining claims are rejected as depending from a rejected base claim.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 20-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "essentially" in claims 20-21, 24, and 29 is a relative term which renders the claims indefinite. The term "essentially" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how essentially "straight," "circular or "following" the shapes must be to be included or excluded by the claim.

The term "major part" in claim 22 is a relative term which renders the claim indefinite. The term "major part" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how "major" a part must be to be included or excluded by the claim.

6. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat.

App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 26 recites the broad recitation wherein the attachment means are arranged at said first and second positions on either side of the opening in said second wall section, and the claim also recites "preferably close" to the opening in said second wall section, which is the narrower statement of the range/limitation.

The term "close" in claim 26 is a relative term which renders the claim indefinite. The term "close" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how close the attachment means must be to be included or excluded by the claim.

Claim 28 recites the broad recitation wherein the filter is fixed between said attachment means to almost bear against the inside of the first wall section of the filter house, and the claim also recites that it "bear[s] against", which is the narrower statement of the range/limitation.

The term "almost" in claim 28 is a relative term, which renders the claim indefinite. The term "almost" is not defined by the claim, the specification does not

provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how "almost" bearing against the inside of the first wall a filter must be to be included or excluded by the claim.

The terms "flexibly pliable," "relatively stiff," and "close" in claim 31 are relative terms which renders the claim indefinite. The terms "flexibly pliable," "relatively stiff," and "close" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how close "flexibly pliable," how "relatively stiff" the supporting layer must be and how "close" the plurality of openings must be to be included or excluded by the claim.

The term "low height" in claim 32 is a relative term which renders the claim indefinite. The term "low height" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how "low height" projections must be to be included or excluded by the claim.

The term "relatively coarse" in claim 34 is a relative term which renders the claim indefinite. The term "relatively" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how "relatively coarse" the mesh plastic net must be included or excluded by the claim.

The wording of claims 36-38 is confusing and the examiner respectfully suggests applicant rewrite the claims to provide clarity as to what is being claimed.

Any remaining claims are rejected as depending from a rejected base claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 20-26, 29-30, and 35-37 is rejected under 35 U.S.C. 102(b) as being anticipated by Pyzel (3,731,678).

Pyzel discloses a breathing protective device (figures 1 & 2) comprising a filter house body (10) having a filter house (area between the inner conduit 14 and outer wall 10) with a filter house chamber (inside 10) and a first wall section (10) having a number of through holes (18), at least one filter (22 & 22a) in the filter house chamber inside said first wall section (10), and a mouthpiece (16) arranged to be introduced into and held in the user's mouth and having an air passage (14) between an opening in a second wall section (wall forming conduit 14) in the filter house and an opening (at top of mouthpiece) at the end that is to be introduced into the user's mouth: wherein the filter house has a first end (bottom), a second end (top) and said first (10) and second wall (14) section that extend between said ends of the filter house, the filter house is elongated and extends parallel to a line between the corners of the user's mouth when the mouthpiece is inserted in the user's mouth, said first wall section (10) of the filter

house is provided with a plurality of through holes (18) in at least one area and that it extends at least essentially straight in the longitudinal direction of the house at least on the inside in at least the area or areas in which said through holes are arranged, the filter (22, 22A) is arranged in the filter house chamber (10), along said second wall section (14) and covering the openings in this wall section, a non return valve (24) that is closed (figure 1) at inhalation and opened (figure 2) at exhalation is arranged in at least said first end (bottom), and at least one passage (14) for exhalation air extends between the opening in the first wall (the valve at 24 is located between hole 18) of the filter house and said non return valve at the first end (bottom) of the filter house. Regarding claim 21, Pyzel discloses said first wall section (10) of the filter house has an inside that is essentially straight in the longitudinal direction of the filter house but arched, bent or angled (the filter hose is a cylinder) in a plane that is perpendicular to the longitudinal direction.

Regarding claim 22, Pyzel discloses an inside of said first wall section (10) that defines a cylindrical segment of the filter house chamber (inside 10), that extends along at least the major part of the length of the filter house chamber (inside 10) and around at least the major part of its circumference, from a first position on one side of the opening in said second wall section (valve at 24), around the inside of a first section to a second position on the other side of said opening. See: figures 1 & 2.

Regarding claim 23, Pyzel discloses that the length of the inner circumference of the first wall section (10) is longer than the circumference of the wall section in the

areas between the opening of this end section and the ends. The wall of 10 surrounds the device and would therefore have the largest circumference. See: Figures 1, 2 3 & 6. Regarding claim 24, Pyzel discloses the inside of said first wall section (10) which is essentially a circular cylindrical. See: figures 1-3 & 6.

Regarding claim 25, Pyzel discloses an attachment means (13) for the filters (22) are arranged on the inside of the filter house. See: figure 1.

Regarding claim 26, Pyzel discloses a device wherein the attachment means (13, 20 & 21) are arranged at said first and second positions on either side of the opening in said second wall section (at valve 24).

Regarding claim 29, Pyzel discloses a device with a filter (22, 22a), when mounted in the filter house chamber (inside 10), has an outside contour (figures 1-2) that essentially follows the inside contour of the first wall section (10) of the filter house. Regarding claim 30, Pyzel discloses a device with a filter (22 & 22a) that is fixed between an attachment means (13, 20 & 21) to bear against the inside of the first wall (10) section of the filter house.

Regarding claim 35, Pyzel discloses a recess (formed inside 25) provided at said first end (bottom) on the outside of the filter house (24) and in that the non return valve is recessed (it is recessed from the bottom end)and fixed in this recess. See: figures 2 & 6).

Regarding claim 36, Pyzel discloses a device with an end wall section (25) at the first end (bottom) of the filter house, all around the inside of the filter house, against

Art Unit: 3771

which end wall section one end edge of the filter bears (20 bears on 25 in between holes 18). See: figures 1-2 & 6.

Regarding claim 37, Pyzel discloses a device with a seat (where 24 sits against 25) for a membrane (24) included in said non return valve (24) is provided at the bottom of the recess at said first end (bottom end). See: figures 2, 4 & 6.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 27-28, 31-34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pyzel (3,731,678) and further in view of Putrello (5,771,885).

Pyzel discloses all the limitations of instant claims 27 & 28, except the attachment means for the filter that are designed as rails, connected to the filter house wall, that extend in the longitudinal direction of the filter house, along the entire length of said first wall section, and form longitudinal boundaries for this wall section and at the same time form seal against the longitudinal edges of the filter and wherein the longitudinal edges of the filter are arranged in grooves in said attachment means.

Putrello teaches a breathing device with a body having a pair of triangular spaced apart bosses (26 and 28) that define a slot (34) into which a removable filter (36) can be inserted. See: col. 2, line 56 - col. 3, line 17 and figures 1 and 3-7.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the means of attaching the filter as disclosed by Pyzel by utilizing a set of spaced apart bosses to form a slot, as taught by Putrello, to obtain a device that allows for quick filter replacement with accurate placement of the filters into the device.

Regarding claim 31, Putrello teaches a filter that comprises both a filtering layer (36) that contains a filter stuff and a supporting layer (38) that is flexibly pliable and relatively stiff and has a plurality of openings (figure 4) arranged close to each other (adjacent), which supporting layer (38) forms a distance means between the filter house wall (when inside the body) and the filtering layer (36).

Regarding claim 32, Putrello teaches a filter chamber having a plurality of low height projections (26 & 28) that form distance between the filter house wall and the filtering layer. See: figures 6 & 8)

Regarding claim 33, Putrello teaches openings in the supporting layer (38) that would communicate with another opening (as air is drawn through) in the supporting layer, such that a distribution of the air can be promoted (via the holes in the supporting layer 38) before the air is sucked into the filtering layer.

Regarding claim 34, Putrello discloses a device with a supporting layer (38) that is designed as a relatively coarse mesh plastic net formed of upper and lower, crossed strands. See: col. 2, lines 60-65, abstract and figure 4.

Regarding claim 38, Putrello discloses a detachable cover (figure 10) that covers an opening (64) at the second end of the filter house, the filter (46) via said opening can be inserted in the filter house chamber (by manually inserting a filter material), and the inside of the cover (inside 70) bears against the second end wall (at 54) of the filter housing (12), after the detachable cover has been put back over the opening.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ferraro (6,530,374); Khudosovtsev et al (4,515,156); Jonasson et al (5,937,856); Stulbach (5,207,221); and Swann (5,315,987).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLINTON OSTRUP whose telephone number is (571)272-5559. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3771

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/Clinton Ostrup/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771